UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

DEC 15 2011

Mr. Michael B. Tate
Interim Director Bureau of Water
Kansas Department of Health and Environment
1000 SW Jackson Suite 420
Topeka, Kansas 66612-1367

Dear Mr. Tate:

Enclosed is the Draft Public Water Supply Supervision Full Program Evaluation Report, dated December 9, 2011, from the site visit conducted by the U.S. Environmental Protection Agency, Region 7, Drinking Water Management and Water Enforcement Branches. The review took place in Topeka on September 19 - 23, 2011.

The evaluation reviewed programmatic, enforcement, data management, capacity development, and operator certification of Kansas' Public Water Supply Supervision Program. However, as you will notice, other areas were evaluated. Please review the draft report and provide any comments you may have. We would appreciate your comments within 45 days of receipt of this letter.

Upon finalizing this report, the EPA will be asking the Kansas Department of Health and Environment to prepare an "Action Plan" to address Summary of Findings-Deficiencies, Summary of Findings-Recommendations, and Summary of Enforcement Review Highlights noted in the Final Report.

We thank you and your staff for their time assisting and answering questions during the review. If you have any questions or comments concerning enforcement program issues, please contact Scott Marquess at (913) 551-7131. For drinking water program issues in this report, please call Doug Brune at (913) 551-7178.

Sincerely,

Mary Tietjen-Mindrup
Chief
Drinking Water Management Branch

Dianne Huffman
Chief
Water Enforcement Branch

Enclosure

U.S. Environmental Protection Agency
Region 7
Water, Wetlands, and Pesticides Division
Drinking Water Management Branch
Water Enforcement Branch

Kansas Department of Health and Environment
Public Water Supply Supervision
Full Program Evaluation

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Executive Summary of 2010 Findings

Introduction

An announcement of the Full Program Evaluation of the Kansas Public Water Supply Supervision Program was mailed to the Kansas Department of Health and Environment on August 23, 2011. As outlined in that letter, the Kansas PWSS Full Program Evaluation was to be conducted during the week of September 19, 2011, at the Curtis State Office Building in Topeka, Kansas.

Doug Brune with the Drinking Water Management Branch and Scott Marquess with the Water Enforcement Branch conducted the evaluation for the U.S. Environmental Protection Agency, Region 7. John Montgomery, Senior Environmental Employee, with the Drinking Water Management Branch assisted with the evaluation of drinking water compliance monitoring data.

Dave Waldo, Former Chief, Public Water Supply Section, was present at the entrance interview, as well as Darrel Plummer, Chief, Compliance and Data Management Unit, and Dan Clair, Chief, Engineering and Permits Unit. Numerous staff from the KDHE assisted the EPA in conducting the Full PWSS Program Evaluation during the week.

The Full PWSS Program Evaluation focused on implementation, data management, and enforcement of Safe Drinking Water Rules adopted as of Calendar Year 2010.

The KDHE is using Safe Drinking Water Information System/State version 2.3. Compliance data is submitted to the Central Office in Topeka, scanned into WebNow, and entered into SDWIS/State. Electronic records in WebNow and compliance data accessed via Drinking Water Watch were reviewed. The Capacity Development and Operator Certification Programs were included in the Full PWSS Program Evaluation as they are conditions for maintaining primacy.

The EPA's enforcement review focused on KDHE's implementation of EPA's Enforcement Response Policy, and on the monitoring of existing enforcement orders. The ERP specifies Return to Compliance or formal enforcement for all systems where the Enforcement Targeting Tool identifies a priority. ETT priorities are intended to represent the worst health-based violators. There were 43 PWSs identified as "enforcement priorities" included on the ETT list (July 2011) at the time of the review. The enforcement review included conversations with the KDHE staff, review of SDWIS/FED data, review of data in Kansas Drinking Water Watch, and an examination of (electronic) system files.

The exit conference was held at 1:00 p.m. on September 29, 2011, by telephone. Mike Tate, Darrel Plummer, Dan Clair, Vickie Wessel, and Teresa Schuyler participated in the exit conference for KDHE. Mary Mindrup, Diane Huffman, Doug Brune, and Scott Marquess participated from the Region 7 Office.

The review indicated that the Kansas PWSS Program has performed well in implementing and maintaining records of adopted drinking rules adopted. Summarized below are findings from the EPA's evaluation.

Summary of Program Review Findings - Deficiencies

1) The KDHE Drinking Water Enforcement program is hampered by two staffing vacancies: the Public Water Supply Chief and the Enforcement and Regulation Development Supervisor. Interim or Permanent selections for these vacancies need to be announced as soon as possible.

2) The date for the extension of submitting request for approval of primacy revision to adopt 4 rules (Stage 2 disinfection by-product, LT2 Ground Water Rule, and Short Term Revision to Lead and Copper Rule) was in October 2011. A new date for submitting the request for approval of primacy revision to adopt these four rules needs to be proposed.

3) Monthly turbidity reports need to be revised to include individual filter effluent follow-up and reporting requirements. The development and implementation of a Standard Operating Procedure that addresses individual filter effluent follow-up and reporting requirements in the monthly turbidity report needs to be initiated.

4) Monthly turbidity reports from surface water systems received at the Central Office by mail or fax need to be physically date stamped on the date received to document the date received entered into SDWIS. The development and implementation of a SOP for documenting receipt of compliance forms by the Central Office needs to be initiated.

5) Step 4 in the instructions directs the system to notify the KDHE with 24 hours if the highest reading exceeds 5.0 NTU. This needs to be corrected that systems are to contact the KDHE if any turbidity reading exceeds 1.0 NTU. The value established for slow sand or alternative filtration needs to be identified.

6) The reporting levels for four Synthetic Organic Chemicals are above the required Federal Detection Limits required in 40 CFR 141.24(h). Contaminants detected above the Federal DLs are to go to increased monitoring until it can be shown that it is reliably and consistently below the maximum contaminant level. The KHDE Lab has shown to the Region 7 Drinking Water Lab Certification Team that it can attain a method detection limit less than the Federal DL, except for endrin.A statement needs to be added to the Phase II/V waiver plan for the 3rd compliance cycle concerning historical data for endrin showing that is reliably and consistently below the MCL.The Reporting Levels for the other SOCs need to be changed to the Federal DL, or a statement in writing needs to be attained from the KDHE Lab that the drinking water program will be notified if any of the three SOCs are detected above the Federal DL but below the reporting level.

7) Stage 2 Compliance Monitoring Plans need to be developed, submitted, and approved prior for systems with approved 40/30 certification requests and systems that qualified for a very small systems waiver during early implementation of the Stage 2 Disinfection By-Product Rule. Table 9 shows these systems for each schedule and the associated compliance date. The earliest compliance date is April 12, 2012. Training needs to be offered for these systems. Region 7 will provide assistance if requested.

8) Sanitary surveys are conducted by individuals in the Bureau of Environmental Field Services. Significant deficiencies are tracked in a database. The development and implementation of an SOP for

tracking that significant deficiencies identified during sanitary surveys have been addressed needs to be initiated.

9) The operator certification program is managed by individuals in the Technical Services Section. SDWIS is maintained by the Public Water Supply Section. The development and implementation of an SOP for reporting systems without an adequately classified operator needs to be initiated.

Summary of Program Review Findings - Recommendations

10) Repeat samples for routine total coliform positive samples determined by the KDHE Lab are collected by the system within 24 hours of being notified of a total coliform positive routine sample. The actual time for collection of a repeat sample averages one to two weeks, and is not representative of the routine sample that tested positive. Consideration should be given to providing systems with extra sample bottles to collect repeat samples within 24 hours of knowing that a total coliform routine sample is positive.

11) The IDSE Reports that were approved in early implementation might not have complete addresses identified for the Stage 2 DBP locations. Region 7 will assist the KDHE if requested in contacting systems to identify complete addresses for the Stage 2 DPB locations.

12) Microbial Toolbox training needs to be developed and offered for the systems in Bin 2 in order that the appropriate option may be selected prior to the LT2 compliance date. The soonest LT2 compliance date is October 1, 2013. Region 7 can help with the training, if requested.

13) The 2009 on-site drinking water lab evaluation by the Region 7 Lab Assessment Team found that the incorrect chemical preservative was being used for all the SOC methods. The KHEL notified the Region 7 Lab Assessment Team that it corrected the chemical preservative for the SOC methods. The Sampling Information Guide available on the Public Water System website should be corrected.

14) Discrepancies exist between the 2010 Kansas Annual Compliance Report submitted by the KDHE and the 2010 SDWIS-FED ACR. The discrepancies were: numbers of MCL DBP violations and numbers of and systems with single and monthly turbidity treatment technique violations, Lead and Copper Rule Routine and Follow-up monitoring.

15) It is recommended that the database be modified to track the PWSID of each water system, a.k.a., "Employer", and that a option for generating a listing of systems without an adequately certified operator be added to the on-line database.

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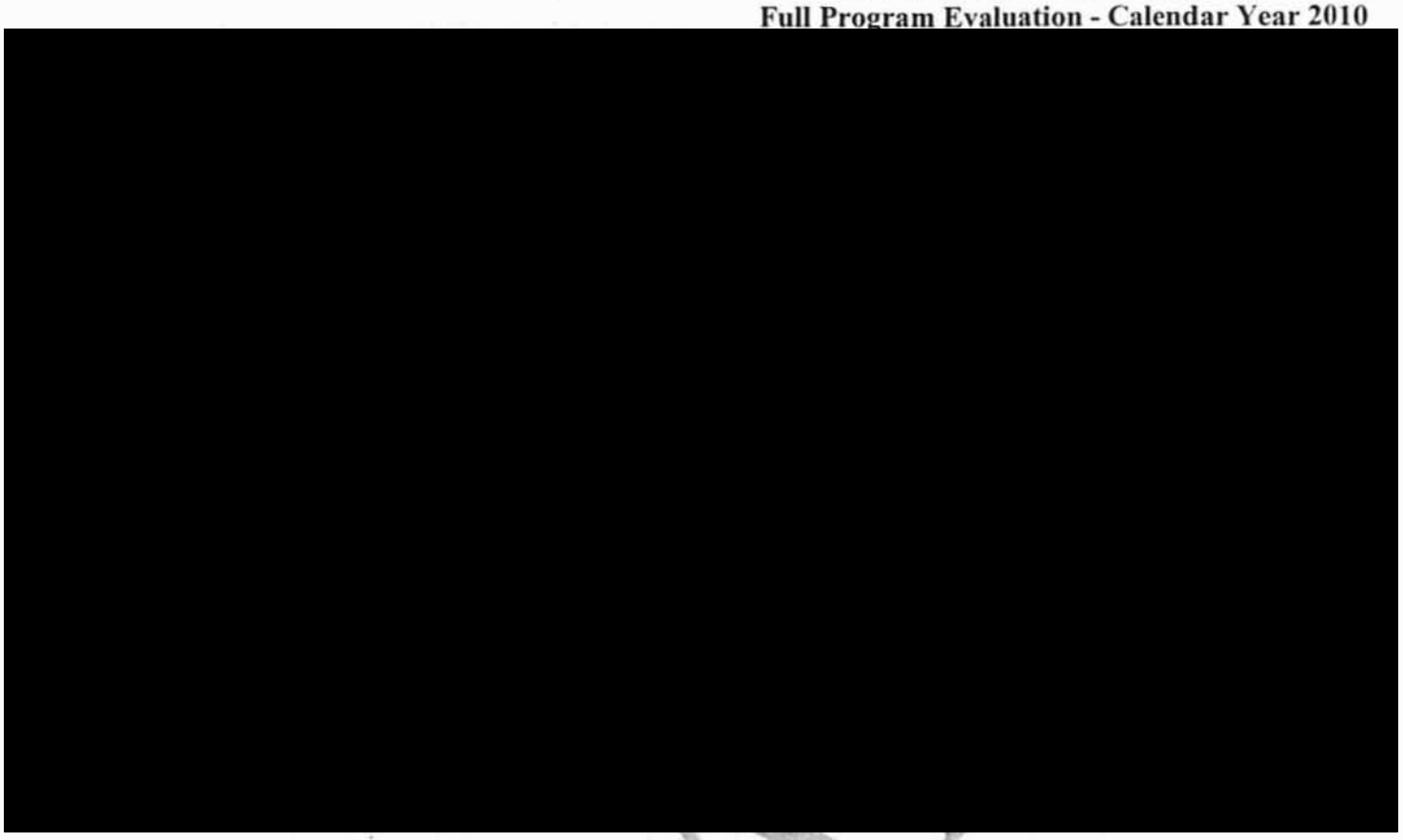

Public Water Supply Supervision Review

A) Historical PWSS Program Grant and DWSRF Set-asides

Table 1 shows the allotments for the PWSS Program in Kansas.

Table 1 - Kansas PWSS Program Allotments

FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10
$995,700	$1,121,400	$1,094,000	$1,075,100	$1,073,900	$1,087,400	$1,084,000	$1,156,000

This grant helps the KDHE develop and implement a PWSS program to enforce the requirements of the SDWA and ensure that water systems comply with the National Primary Drinking Water Regulations. Key activities carried out under a PWSS program include:

- developing and maintaining state drinking water regulations;
- developing and maintaining an inventory of PWSs throughout the state;
- developing and maintaining a database to hold compliance information on PWS's;
- conducting sanitary surveys of PWSs;
- reviewing PWS's plans and specifications;
- providing technical assistance to managers and operators of PWSs;
- carrying out a program to ensure that the PWSs regularly inform their consumers about the quality of the water that they are providing;
- certifying laboratories that can perform the analysis of drinking water that will be used to determine compliance with the regulations; and
- carrying out an enforcement program to ensure that the PWSs comply with all of the state's requirements.

This evaluation will not cover the drinking water laboratory certification program. This evaluation is conducted by the Region 7 Drinking Water Program Manager.

The KDHE also has been using the set-asides in the Drinking Water State Revolving Fund. Since 1997, the KDHE has spent $10,961,630 of the $13,7655,310 made available. This money is used for mainly for the capacity development program and the contract with the Kansas Rural Water Association to provide technical assistance to small systems. Recently the set-asides have been used to re-imburse LT2 crypto monitoring conducted by systems serving less than 10,000.

B) Primacy – Past and Present

The KDHE proposed a comprehensive package of new regulations which (with a few minor exceptions) adopt the National Primary Drinking Water Regulations by reference in May 2004. Most of the national rules which the EPA has promulgated pursuant to the federal SDWA will become the regulations for Kansas public water supplies. With the exception of bacteriological monitoring for small water systems, the proposed new regulations are no more stringent than is ~~absolutely~~ necessary to meet the federal requirements for administering the SDWA.

The KDHE has frequently adopted revised drinking water regulations (K.A.R. 28-15-1 through K.A.R. 28-15-37) to comply with the SDWA and its various amendments as re-authorized by Congress since 1974 (the most significant federal amendments being added in 1996). Since the last administrative adoption of state rules and regulations, the EPA has promulgated nine new major drinking water rules, and is preparing to promulgate at least four more additional rules in the near future.

The nine new drinking water rules adopted by reference in May 2004 are the Arsenic Rule, the Consumer Confidence Rule, the Filter Backwash Recycling Rule, the Interim Enhanced Surface Water Treatment Rule, the Lead and Copper Rule Minor Rule Revisions, the Long Term 1 Enhanced Surface Water Treatment Rule, the Revisions to the Public Notification Rule, the Radionuclides Rule, and the Stage 1 Disinfectants and Disinfection By-Products Rule.

More information on the KDHE adopting-by-reference policy can be ascertained from the Executive Summary: http://www.kdheks.gov/pws/regs/A.pdf .

The four new rules to be adopted in the future are the Ground Water Rule, the Long Term 2 Enhanced Surface Water Treatment Rule, the Short Term Revisions to the Lead and Copper Rule, and the Stage 2 Disinfectants/Disinfection Byproducts Rule.

The request for an extension to April 2010 to adopt these rules was provided to the KDHE in September 2009. Due to the "bundling" of these rules, Region 7 granted until October 10, 2011, for the KDHE to submit complete and final primacy program revisions for these drinking water rules.

A commitment in the 2011 the KDHE PWSS Program Work Plan was to submit a request for approval of primacy revisions to adopt these 4 rules in the First Quarter Fiscal Year 2011.

Draft crosswalks to adopt the four new rules by reference were submitted to Region 7 by e-mail in April 2010. Approval with minor comments was provided in May 2010.

Appendix A is the Timeline for Permanent Rules and Regulations in the State of Kansas. The step where these four rules are in this timeline needs to be identified so a date for the request for approval of the primacy revision package will be submitted to Region 7 can be proposed.

The KDHE is currently implementing these 4 rules. When necessary, the KDHE will refer enforcement actions to Region 7 until the rules are published in the Kansas Register.

Region 7 conducted early implementation of the Stage 2 DBP Rule and the LT2 rule for the first three schedules. Standard Monitoring Plans were prepared by the systems and approved by Region 7. During the training the systems were instructed to arrange a contract with a the KDHE-approved lab to analyze the standard monitoring samples because the KDHE Lab did not have the capacity to analyze the standard monitoring samples. Some systems neglected to contract with a lab, and therefore, did not have the data to prepare an IDSE Report. Appendix B lists the systems that were referred to the EPA for not submitting an IDSE Report required by the Stage 2 DBP Rule. The due date for submission of an IDSE Report is January 1, 2012. The systems appear on the way towards that end. Enforcement codes and dates have been entered into Safe Drinking Water Information System/FED. Approved IDSE Reports will be provided to the KDHE in coordination with Andrew Hare, the KDHE. The IDSE Reports that

were approved in early implementation might not have complete addresses identified for the Stage 2 DBP locations. Region 7 will assist the KDHE if requested in contacting systems to identify complete addresses for the Stage 2 DBP locations.

C) Performance Measures

The overall objective of the drinking water program is to protect public health by ensuring that PWSs deliver safe drinking water to their customers. The EPA measures the compliance of drinking water standards in three ways: by population, by community water systems, and by "person months."

Safe Drinking Water-211 – Population served by Community Water Systems – percent of the population served by community water systems that receive drinking water that meets all applicable health-based drinking water standards through approaches including effective treatment and source water protection. Target – 90%

SDW – SP1.N11 – CWSs meeting safe standards - Percent of community water systems that meet all applicable health-based standards through approaches that include effective treatment and source water protection. Target – 90%

SDW – SP2 – "Person Months" w/ CWSs safe standards - Percent of "person months" (i.e. all persons served by community water systems times 12 months) during which community water systems provide drinking water that meets all applicable health-based drinking water standards. Target – 95%

Table 2 shows the Performance Measures by CWSs in Kansas for each quarter during 2010.

Table 2 – 2010 Performance Measures

Quarter	1	2	3	4
Number of Health-Based Violations	311	297	287	260
Systems with Health-Based Violations	105	112	113	111
Population with Health-Based Violations	164,009	562,920	631,816	602,720
Total Systems	894	891	890	899
Total Population	2,575,112	2,577,180	2,639,318	2,639,251
GPRA Population (Subobjective 2.1.1)	93.6%	78.2%	76.1%	77.2%
GPRA System (SP1)	88.3%	87.4%	87.3%	87.7%
Person-Month Systems (SP2)	93.7%	93.9%	93.8%	93.9%
Person-Month Population	97.8%	96.4%	96.1%	95.6%

D) Staffing – Central and District Office

The Division of Environment of the KDHE has five Bureaus and the Kansas Health & Environmental Labs (Appendix C). ~~The Public Water Supply~~ is one of eight sections in the Bureau of Water (Appendix D). The Public Water Supply has four units: compliance and data management, engineering, capacity development, and the State Drinking Water Revolving Loan Fund (Appendix E). Two employees in the Technical Services Section of the Bureau of Water manage the Water and Wastewater Operator

Certification Program. Fourteen employees in the Technical Services Section of the Bureau of Environmental Field Services provide water program regulatory services (conduct sanitary surveys) and compliance assistance, and respond to citizen concerns regarding water.

The FY09 and FY10 PWSS Program Work Plan Report identified 17.2 FTEs.

Karl Mueldener, Director, Bureau of Water, and Dave Waldo, Chief, Public Water Supply Section, announced their retirement from the KDHE on September 12, 2011. Their last day at the KDHE Offices was September 19, 2011. John Mitchell, the KDHE's Director of Environment, announced on September 19, 2011, that Mike Tate, Chief, Technical Services Section, would be the Interim Director of the Bureau of Water, effective on September 20, 2011. No announcement had been made filling the Public Water Supply Section Chief vacancy. Kelly Kelsey, Enforcement and Regulation Development Supervisor, left the KDHE in February 2011. No announcement had been made filling this vacancy. Interim or Permanent selections need to be made for these vacancies as soon as possible.

The PWSS has 2 other vacancies: Engineering Plan Review and Monitoring and Compliance.

E) Annual Compliance Report – State and Federal Inventory and Violations

The Draft State of Kansas Public Water Supply Annual Compliance Report for Calendar Year 2010 (2010 Kansas ACR) was received on July 29, 2011. It was due on July 1, 2011.

1) Inventory. Table 3 is the PWS inventory that is contained in the 2010 Kansas ACR:

Table 3 – 2010 Kansas ACR PWS Inventory

Type of Water System	Ground Water	Surface Water	Ground Water/Surface Water	Total	Population
Community Water Systems (CWSs)	526	308	62	896	2,632.410
Non-Transient Non-Community Water Systems (NTNCs)	45	2	0	47	19,641
Transient Non-Community Water Systems (TNCs)	88	4	0	92	4,185
Total	659	314	62	1,035	2,656,236

It is not clear why these categories were chosen.

Future ACRs should provide numbers for the 6 types of PWSs based on source water categories: surface water, surface water purchasing, ground water under the influence, ground water under the influence purchasing, ground water, and ground water purchasing.

Table 4 shows the number of CWSs in each category using the GPRA MS Excel Pivot Table (http://water.epa.gov/scitech/datait/databases/drink/sdwisfed/pivottables.cfm).

Table 4 – 2010 Kansas CWS Inventory by Source Water Categories

Category	SW	SWP	GU	GUP	GW	GWP	Total
Number	76	285	5	7	446	79	898
Population	1,391,089	366,496	140,117	15,596	689,787	36,251	2,639,336
Total	361		12		525		898
Total	1,757,585		155,713		726,038		2,639,336

These categories provide a more descriptive indication of the number of systems that have specific rule compliance requirements. For example, 76 CWSs have monthly turbidity reporting requirements, not 308.

The populations of drinking water systems are updated every year using information from the Secretary of State's Office. If a system requests a change in population served, KDHE requires a certification from the system before any change is made in the Safe Drinking Water Information System (SDWIS). Also, KDHE has other tools to update the number of connections and administrative contacts, etc. KDHE is maintaining and updating the inventory as required.

2) Violations. Appendix F shows the number of violations reported in the 2010 Kansas ACR and the SDWIS Fed ACR. The 2010 Kansas ACR did not provide numbers of systems that returned to compliance, as shown by NP in Table 5. This should be included in future ACRs.

The numbers were not close for:

a) numbers of DBP MCL violations; however, the number of systems with DBP MCL violations did match,
b) numbers and systems with single and monthly turbidity treatment technique violations,
c) numbers and systems with Lead and Copper Rule Routine and Follow-up monitoring violations, and
d) numbers and systems with public notice rule violations.

These differences between the numbers need to be investigated and corrected, where necessary.

F) Data Management

KDHE is using SDWIS/State version 2.3. KDHE enters sampling schedules into SDWIS/State. The KDHE Lab works with the systems to facilitate sample collection and compliance data generation. The KDHE Lab reports compliance data directly into SDWIS/State. Compliance data generated by other drinking water labs certified by KDHE or from public water supplies are mailed, faxed, or e-mailed to the Central Office in Topeka. These compliance data are scanned into WebNow and entered into SDWIS/State. KDHE is working to develop a policy requiring electronic transfer of data into SDWIS/State from all private labs.

The Drinking Water Watch(DWW) went on-line in 2010 for the public to view compliance data stored for each drinking water system: http://165.201.142.59:8080/DWW/.

G) Drinking Water Rule Implementation

The Public Water Supply (PWS) Section has a website: http://www.kdheks.gov/pws.

Appendix G is a copy of the information available on the KDHE PWS website.

Available on the PWS website are Survival Guides, developed for the Total Coliform Rule, the Interim Enhanced Surface Water Treatment Rule, the Long Term 1 Enhanced Surface Water Treatment Rule, the Filter Backwash Recycling Rule, the Phase II/V Chemical Contaminant Monitoring Rule, the Stage 1 Disinfectants/Disinfection Byproducts Rule, the Public Notification Rule, and the Consumer Confidence Report Rule. These guides provide monitoring and compliance information, and reports for recording and reporting compliance data to KDHE.

Survival Guides for the four new rules should be developed for placement onto the website to coincide the submittal of the request for approval of primacy revision.

KDHE provides training on the rules every year at the Kansas Rural Water Association Annual Conference in April and the University of Kansas Water and Water Operators Annual School in August.

The Monitoring and Compliance Group of the Compliance and Data Management Unit of the Public Water Supply Section prepares lists of systems that need compliance samples for each rule and shares these lists with the Kansas Department of Health and Environment Laboratory (KHEL).

The KHEL is certified to conduct drinking water analysis by EPA Region 7. The most recent on-site evaluation for chemistry was in November 2009; for microbiology was in April 2009, and for radiochemistry was in September 2009. The KHEL maintains these certifications until 2012.

The Drinking Water Watch was used to check for the existence of compliance data received in 2010. If the compliance data was not conducted in 2010 because of the approved waiver plan discussed in Section G. 4 below, the existence of data consistent with the waiver plan was checked.

Two or three of each of the 6 categories of PWSs were randomly selected in each of the 6 Bureau of Environmental Field Services Districts. Appendix H is the listing of systems that were checked for existence of compliance data.

Using the Drinking Watch Watch, few occurrences were found where a system did not have compliance data for each of the adopted rules.

1) Total Coliform Rule (TCR)

Jean Herrold is the Total Coliform Rule Compliance Officer.

KDHE adopts by reference the Total Coliform Rule [40 CFR 141.21], with the following changes:

a(2) - The sampling period microbiological compliance shall be one calendar month for all PWSs, and

a(3) – Number of required samples

(i) Each PWS that uses surface water as its source of supply and serves a population of 4,100 or less shall take a minimum of 4 water samples per compliance period.

(ii) Each PWS that uses groundwater as its source of supply that serves at population of 2,500 or less and each PWS that serves at population of 2,500 or less that purchases water from another PWS shall take a minimum of 2 water samples per compliance period. PWSs serving more than 2,500 shall collect the number of samples per compliance period as described in 141.21(a)2.

Table 5 lists the number samples collected for compliance with the Total Coliform Rule by the KHEL Microbiology Lab.

Table 5 – Total Coliform Rule Samples in 2010

Quarter Collected	Total Coliform Negative	Total Coliform Positive	E coli Positive	Invalid Samples	Quarterly Totals
First	8,264	28	0	197	8,489
Second	8,515	109	10	125	8,759
Third	8,897	180	7	148	9,232
Fourth	8,701	92	0	189	8,982
Total	34,377	409	17	659	35,462

These data are reported electronically to SDWIS by the KDHE Lab. The reason for the invalidation of a sample is recorded into SDWIS by the KDHE Lab.

Approximately 11,000 samples are generated by other drinking water commercial or municipal labs certified for microbiology by the KDHE. Some are reported electronically and some are entered manually into SDWIS.

A non-acute MCL violation occurs when more than one sample per month, or more than 5% of samples that collect over 40 samples per month. i.e., serves more than 33,000, are total coliform positive. The 2010 ACR had 55 systems with 63 monthly non-acute MCL violations; this agrees with Federal SDWIS.

A repeat sample is required for collection on all Total Coliform Positive routine samples. These are to be collected within 24 hours of being notified of the positive result. The collection of a repeat sample is typically 24 hours for systems with their own certified micriobiology lab. The collection of a repeat sample for systems using the KDHE Lab is typically one week, and sometime two weeks. This is due to the KDHE Lab notifying the system of a total coliform positive when the repeat sample bottles are received by mail. KDHE should consider sending out extra sample containers so systems could collect a sample within 24 hours that the KDHE Lab is aware of a Total Coliform Positive sample.

An acute MCL violation occurs when a repeat sample is either total coliform or E. coli positive. The 2010 ACR had three acute MCL violations from 3 systems; this agrees with Federal SDWIS.

The ACR reports states that an acute MCL violation occurs with any combination of E coli positive in the initial (routine) and repeat sample. This should be corrected according to the definition in the previous paragraph.

The KDHE Lab was visited by the Region 7 Lab Assessment Team in April 2009. The Region 7 Lab Assessment Team recommended the Region 7 Certification Authority extend the KDHE Lab drinking water lab certification for microbiology. The microbiology certification was extended until April 20, 2012.

Some Post Offices are being closed which could impact the delivery of samples within the required 30 hour holding time. Systems may have to switch laboratories or else drive the samples to the lab rather than use the mail as they've done in the past

2) Interim Enhanced/Long Term 1 Enhanced Surface Water Treatment Rule (LT1)

Dianne Sands is the Surface Water Treatment Rules Compliance Officer.

Surface water treatment rules require at least 3-log removal and/or inactivation of *Giardia lamblia* cysts and at least 4-log removal and/or inactivation of viruses before the first customer. According to 40 CFR Part 141.70(b), a PWS using a surface water source or a ground water source under the direct influence of surface water is considered to be in compliance with these requirements if it meets the filtration requirements of 40 CFR 141.73 and the disinfection requirements in 40 CFR 141.72(b).

Filtration performance is assessed using the treatment technique, turbidity. Turbidity triggers were lowered via Subpart P for systems serving at least 10,000 in 1998. These triggers became applicable for systems serving less than 10,000 via Subpart T in 2002.

Survival Guides for Interim and Long Term 1 Enhanced Surface Water Treatment Rules, dated 2009, are found on the PWS section website:

http://www.kdheks.gov/pws/survival.html

Appendix C of each survival guide contains a "Monthly Turbidity – Disinfection – CT" form with associated directions for the system to complete, sign, date, and return the form no later than the 10th day following the end of each month.

The form and notes for completing the form were modified in November 2010. The survival guides should be modified to include these new forms with required and suggested modifications described below.

The form provides spaces for reporting daily:

A) Minimum Residual in the Distribution System,
B) Minimum Residual Leaving the Plant,
C) Maximum Combined Filter Effluent (CFE) Turbidity Reading For Each Day,
D) Total Number of CFE Turbidity Readings Taken Each Day,
E) Number of CFE Turbidity Readings Greater than 0.3 NTU,
F) Disinfectant Contact Ratio, and
G) Bacteriological Sample Collection.

Three columns in A and B are provided to report Minimum Daily Residual, Disinfectant Type (Combined or Free), and Number of Residual Readings Taken. The lowest minimum daily residual

recorded in the month is to be entered at the bottom of the first column. The total number of residual readings taken in the month is to be entered at the bottom of the third column.

The instructions should include the minimum frequency for recording residual disinfectant leaving the plant (6, or once every four hours of operation [40 CFR 141.72(b)2]) and in the distribution system (at least daily (KDHE rule), including the measurement with every total coliform rule sample collected). Footnotes on the minimum frequencies should be added to A and B on the form.

Free and total chlorine residuals may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument provided the chemistry, accuracy, and precision remain the same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every five days, or with a protocol approved by the State. This should be evaluated during the sanitary survey.

The instructions include the minimum frequency for recording daily combined filter effluents (CFE) (at least every four hours of operation, or daily for plants serving less than 500 [40 CFR 141.74(c)]) reported in D. A footnote on the minimum frequency should be added to D on the form.

Column E is to identify the number of CFE readings that exceed the trigger of 0.3 NTU established for conventional and direct filtration treatment. The form includes a parenthesis, "(>= 0.35)". The parenthesis in the instructions number 6, "0.5 for systems < 10,000 until January 14, 2005)", should be deleted, and replaced with an explanation of the "(>= 0.35)" in Column E of the form.

The trigger needs to be included for the slow sand and alternative filtration treatments.

The notes to the form provides a formula for calculating Percent of NTU Readings which are in compliance. The formula needs to corrected, as follows:

$$\frac{\text{Total (Sum of Readings in D)} - \text{Total (Sum of Exceedances in C)}}{\text{Total (Sum of Readings in D)}}$$

Step 4 in the instructions directs the system to notify KDHE with 24 hours if the highest reading exceeds 5.0 NTU. This needs to be corrected that systems are to contact KDHE if any turbidity reading exceeds 1.0 NTU. The value established for slow sand or alternative filtration needs to be identified.

Daily Disinfectant Ratios (Column F) are not being reported by every system. Monitoring and Reporting violations need to be assigned.

The instructions should include direction for completing the "Bact Samples Collected" (Column G).

Monthly turbidity reports need to be revised to include individual filter effluent follow-up and reporting requirements. The development and implementation of an SOP that addresses individual filter effluent follow-up and reporting requirements in the monthly turbidity report needs to be initiated as soon as possible.

The instructions should include direction for completing the "Bact Samples Collected" (Column G).

The form contains 3 boxes at the bottom of the form to be completed by the system:

☐ Please check box if disinfectant residual leaving the plant was < 2.0 mg/L free chlorine or combined (attach required data with this report)

☐ Please check box if the Individual Filter Effluent (IFE) was monitored and recorded every 15 mintues as required

☐ Please check box if any IFE exceeded 1.0 NTU in two consecutive readings taken 15 minutes apart (attached required data with this report)

The instructions needs to include the required data needed if the first and third box are checked.

The form needs to be modified and instructions developed for the following individual filter effluent follow-up and reporting requirements:

a) Systems serving at least 10,000:
   2 consecutive recordings greater than 0.5 NTU taken 15 minutes apart at the end of first 4 hours of continuous filter operation after backwash/offline
b) All systems
   a. 2 consecutive recordings greater than 1.0 NTU taken 15 minutes apart at the same filter for 3 months in a row
   b. 2 consecutive recordings greater than 2.0 NTU taken 15 minutes apart at the same filter for 2 months in a row

KDHE has a survival guide for systems serving more than 10,000 and for systems serving less than 10,000. Appendix C of the each survival guide should have different forms for the different requirements.

The instructions state that completed "Monthly Turbidity – Disinfection – CT" forms are to be returned no later than the 10th day following the end of the month. This should be replaced with "Reports are due by the 10th day of the following month".

The form states the form is to be mailed to the Public Water Section in Topeka. The form should also include a fax number. The form should also include a statement that "Reports are due by the 10th day of the following month". An electronic version of the form should be developed for use by systems to submit via e-mail.

Forms are being received at the Central Office by e-mail, letter, or fax. However, the date the forms are received by the Central Office are not being documented for every form, particularly those received by letter or fax. Forms received by e-mail are e-mailed to WebOne. The date of this e-mail is entered into SDWIS. Forms received by letter or fax need to date-stamped. This date stamp should be entered into SDWIS. Table 6 shows the number of forms received in 2010 that were not date-stamped.

Table 6 – Monthly Turbidity Forms Date-Stamped

System Name	Monthly forms Received in 2010	Monthly Forms Date-stamped in 2010
Miami County RWD #2	12	8
Independence	12	12
Olathe	12	7

A window needs to be established for when a report is deemed to be late for reporting by the 10th day of each subsequent month, and will be assessed a SDWIS violation code of 38 0300.

The 2010 KDHE ACR had 33 treatment technique violations from 11 systems. The Federal SDWIS has 2 treatment technique violations from 2 systems.

Region 7 conducted early implementation activities in Kansas for the Initial Bin Determination of the LT2 Rule for the first three Schedules; the KDHE conducted early implementation activities for Schedule 4 systems, i.e., serving less than 10,000, in Kansas. The KDHE Microbiology Lab sent out E coli sample bottles every other week early (July 2008) to the 69 Schedule 4 systems. The KHEL stopped sending out sample bottles once a system's running annual average exceeded the initial triggers of 10 E coli/100 ml for systems using reservoirs or lakes and 50 E coli/100 ml for systems using rivers or streams. The KDHE Microbiology Lab re-started E coli sampling when EPA elevated the trigger to 100 E coli/100 ml for all systems in February 2010. About 20 systems exceeded the higher trigger and were instructed by KDHE to conduct crypto monitoring using an EPA-approved Crypto Lab. A Drinking Water Set Aside was made available for States to reimburse this crypto sampling. The reimbursement program was managed by the KDHE Capacity Development Program.

Most of the systems landed in Bin 1. Table 7 lists those systems in Kansas that landed in Bin 2 and identifies the associated compliance date. This is the date the systems in Table 7 will need to add an additional log crypto treatment or removal. Microbial Toolbox training needs to be developed and offered for the systems in Bin 2 in order that the appropriate option may be selected prior to the compliance date. EPA Region 7 can help with the training, if requested.

Table 7 – Systems with LT2 Bin 2 Initial Determinations

Schedule	Compliance Date	Systems	System Name in Bin 2
1	April 1, 2012	5	None
2	October 1, 2012	1	None
3	October 1, 2013	11	Atchison, Coffeyville, Parsons, Salina
4	October 1,2014	69	Humboldt, Iola, MDCPUA, Longton, Neodesha, Oswego, PWWSD #23, Russell, St. Paul*

*St. Paul's initial Bin Determination has been 3; however, the contract lab it was using voluntarily revoked its EPA crypto lab approval. Additional discussion will be needed regarding their initial bin determination.

3) Stage 1 Disinfectants and Disinfection Byproducts Rule (Stage 1 DBP)

Andrew Hare is the Disinfectants/Disinfection By-Products Rule Compliance Officer.

Kansas Drinking Water Regulation 28-15-19 requires all drinking water supplied to the public from a public water supply system shall be disinfected. When chlorination is employed, a sufficient amount of chlorine shall be added to the water to maintain a
distribution system chlorine residual of at least 0.2 mg/L of free chlorine or 1.0 mg/L of combined chlorine.

The Stage 1 DBP applies to all CWSs and NTNCWSs that add a chemical disinfectant to its finished water, and to those systems buying from such systems that boost the chemical disinfectant supplied to its customers.

Table 8 lists the monitoring schedule for the systems that have Stage 1 DBP Rule compliance monitoring requirements.

Table 8 – Stage 1 DBP Rule Systems

Frequency	SW	SWP	GU	GUP	GW	GWP	Total
Triennial	1	21		4	443	6	475
Annual	1	14	2	1	27	1	46
Quarterly	82	23	2	0	8	0	115

The Maximum Contaminant Level (MCL) for Total Trihalomethanes is 0.080 mg/L. The MCL for Haloacetic Acids (HAA5s) is 0.060 mg/L.

Forms for reporting compliance with the MCLs for TTHMs and HAA5s are contained in the Survival Guide to the Stage 1 Disinfectants and Disinfection By-Products Rule.

The Kansas 2010 ACR had 14 systems with 41 HAA5s MCL violations and 15 systems with 43 TTHMs MCL violations; 8 of these systems are on quarterly monitoring and exceed the MCL every quarter: TTHMs&HAA5s-Elk City, Grenola, Longton, Moline, and Severy; TTHMs – Mitchell County RWD #2; and HAA5s – Linn Valley and Richmond. The Federal SDWIS has 20 systems with 63 HAA5s and/or TTHMs MCL violations.

Forms for reporting compliance with the Total Organic Carbon (TOC) removal percentages are contained in the Survival Guide to the Stage 1 Disinfectants and Disinfection By-Products Rule.

All but 4 of the 75 surface water systems use conventional treatment, and therefore, have TOC removal percentage requirements. Kansas had 4 systems with 12 Total Organic Carbon (TOC) Treatment Technique Violations. The Federal SDWIS has 4 systems with 8 violations.

The "DAILY CHLORINE RESIDUAL LOG SHEET" is contained in the Survival Guide to the Total Coliform Rule. KDHE determines compliance with chlorine and chloramines maximum disinfectant residuals (MRDLs) for systems that do not have Stage 1 DBP compliance monitoring requirements.

Compliance forms to report quarterly and running annual averages for compliance with the chlorine, chloramine, and chlorine dioxide MRDLs by systems with Stage 1 DBP compliance monitoring requirements are contained in the Survival Guide to the Stage 1 Disinfectants and Disinfection By-Products Rule. One of the forms is for chlorine or chloramines. Another form is for chlorine dioxide; this form also provides space to report compliance with the chlorite MCL.

There are 19 systems in Kansas that use chlorine dioxide .

There are 8 systems in Kansas that use ozone. There does not appear to be a form in the Stage 1 DBP Survival Guide for reporting compliance with the bromate MCL.

Compliance dates for the Stage 2 DBP Rule are approaching soon. The IDSE Reports submitted and approved during early implementation are used as the Stage 2 Compliance Monitoring Plan. Stage 2 Compliance Monitoring Plans need to be developed, submitted, and approved prior for systems with approved 40/30 certification requests and systems that qualified for a very small systems waiver during early implementation of the Stage 2 DBP Rule. Table 9 shows these systems for each schedule and the associated compliance date. Training needs to be offered for these systems. EPA Region 7 will provide assistance if requested.

Table 9 – Stage 2 DBP Compliance Plans Needed

Schedule	Compliance Date	Approved 40/30 Certifications	Qualified for Very Small System (VSS) waivers
1	April 1, 2012	10	3
2	October 1, 2012	4	2
3	October 1, 2013	31	44
4	October 1, 2013 (no LT2 crypto monitoring)	233	301
4	October 1, 2014 (LT2 crypto monitoring)	5*	45*

* Estimate

4) Phase II/V Chemical Monitoring Rule

Dianne Sands is the Phase II/V Chemical Monitoring Rule Compliance Officer.

A Phase II/V Waiver and Monitoring Plan was prepared and submitted for the second compliance cycle, 2002 – 2010. It was approved by e-mail on April 1, 2004. See Appendix I.

A Draft Phase II/V Waiver and Monitoring Plan for the third compliance cycle, 2011-2019, was submitted on August 15, 2011.

a) Inorganic Compounds (IOCs)

1) Nitrates

Every system has routine monitoring for nitrate. The MCL for nitrate is 10 mg/L. Mandatory disinfection per 28-15-19 allows for a monitoring waiver for nitrite; this waiver is documented in the Phase II/V Monitoring Waiver Plan.

Ground Water systems have routine monitoring of once per year. Except for TNCs, repeat monitoring is increased to quarterly whose routine monitoring yields results are at least ½ the MCL, i.,e. 5 mg/L. The trigger for increased monitoring has been increased to 10 mg/L because historical data has shown that systems have been reliably and consistently below the MCL.

Surface Water systems have quarterly routine monitoring of once a quarter. Routine monitoring may be reduced to once after four consecutive quarterly samples are reliably and consistently below the MCL. Surface water systems not exceeding the MCL for nitrate are on annual monitoring because historical data has shown that systems are reliably and consistently below the MCL.

Kansas has 27 systems with 62 nitrate MCL violations; this agrees with Federal SDWIS. Six of these systems exceed the MCL every quarter: Everest, Haviland, Norwich, Palmer, Pretty Prairie, and Robinson.

2) Arsenic

The 2010 ACR had 26 MCL violations from 7 systems; this agrees with Federal SDWIS. Six of these systems exceed the MCL every quarter: Argonia, Atwood, Buhler, Clayton, Englewood, and Oberlin.

3)Fluoride

The 2010 ACR had 4 MCL violations from 1 system: Liebenthal.

B) Volatile Organic Compounds (VOCs)

The 2010 ACR has 1 system with VOC M&R violations; Federal SDWIS has 2 systems with 2 VOC M&R violations. Similarly, Federal SDIWS has 42 individual VOC M&R violations from 2 systems; the 2010 ACR has none of these individual VOC violations.

C) Synthetic Organic Compounds (SOCs)

Most of the reporting levels from the KHEL for the SOCs are at the Federal Detection Level (DL) required by 141.24(h), except for the four SOCs listed in Table 9.
The EPA Region 7 Drinking Water Lab Assessment Team during the on-site evaluation for chemistry in November 2009 determined that KHEL was able to attain a method detection limit less than the Federal DL for these four SOCs, with the exception of endrin; the attainable MDL is also included in Table 10. The reporting limit for these four SOCs should be changed to the Federal DL, or the Public Water Supply Section should obtain in writing that it will notified by the KHEL if a contaminant is detected above the Federal DL and the below the Reporting level for the contaminants in Table 10. The waiver plan should also include that historical data in the monitoring for endrin has shown it is reliably and consistently below the MCL.

Table 10 – SOCs with Reporting Levels greater than Federal DLs

SOCs	MCL (ug/L)	Reporting Level (ug/L)	Federal DL (ug/L)	Attainable Method DL (ug/L)
Endrin	2	.2	.01	.04
Hexachlorocyclopentadiene	50	5	.1	.001
Methoxychlor	40	4	.1	.1
Simazine	4	.4	.07	.01

Attaining the Federal DL is not a condition for drinking water certification. However, the waiver plan should also include that historical data for endrin compliance monitoring has shown that systems are reliably and consistently below the MCL.

The 2009 on-site drinking water lab evaluation by the Region 7 Lab Assessment Team found that the incorrect chemical preservative was being used for any of the SOCs methods. The KHEL notified the Region 7 Lab Assessment Team that it corrected the chemical preservative for the SOC methods. The Sampling Information Guide available on the PWS website should be corrected by the end of the next quarter.

The DWW lists carbofuran as a contaminant analyzed by EPA Method 507 with a reporting level of 0.5 ug/L; Olathe is one such system. EPA Method 507 is not an approved method for carbofuran. An approved method for carbofuran is EPA Method 531.1. The DWW should be corrected to indicate an approved method for carbofuran. The Required Federal DL is 0.9 ug/L.

Federal SDWIS has 2 atrazine M&R violations from 2 systems and 2 ethylene dibromide M&R violations from 2 systems; the 2010 ACR had no chemical M&R violations.

5) Radionuclides

Dianne Sands is the Radionuclide Rule Compliance Officer.

The 2010 ACR had 17 uranium MCL violations from 6 systems; Federal SDWIS has 16 uranium MCL violations from 7 systems. Three of these systems exceed the MCL every quarter: Oberlin, Timken, and Towns River.

The 2010 ACR had 3 systems with 5 combined radium MCL violations; this agrees with Federal SDWIS. None of the systems exceed the MCL every quarter.

6) Lead and Copper Rule

Andrew Hare is the Lead and Copper Rule Compliance Officer.

KDHE allows systems that are to collect 5 compliance samples to collect 6 samples, and use the 5th ranked sample as the 90th percentile value. This is an allowable implementation of the rule.

However, during its training on the lead and copper rule, the KDHE presenter is saying that the 6 sample is "thrown out". It is strongly encouraged that the presentation be modified to represent the presentation in the previous paragraph, i.e. the 5th ranked sample is used as the 90the percentile value

The 2010 ACR had 31 routine or follow-up monitoring or reporting violations from 29 systems; the Federal SDWIS has 71 routine or follow-up monitoring or reporting violations from 59 systems.

7) Ground Water Rule

Jean Herrold and Patti Croy are the Ground Water Rule Compliance Officers.

Training to submit contact time approvals was conducted by Kelly Kelsey before the compliance milestone of December 1, 2009. Seventy seven systems have applied for 4-log approval; 73 were approved. Four of the approvals were to systems that purchase their water.

The monthly Disinfection Report for the Ground Water Rule can be found on the PWS website: http://www.kdheks.gov/pws/groundwater_rule.htm.

The 2010 KDHE ACR listed two systems with one monitoring and reporting (M&R) violation, and 1 system with a treatment technique violation.

Implementation of the Ground Water Rule was not consistent early on. The KDHE Microbiology Lab was not sending out a sample bottle for the raw water E coli sample with the sample bottles sent out for the repeat samples with every positive routine sample. Recent checks in the Drinking Water Watch have shown that the E coli sample bottles are not consistently being included with the repeat sample bottle shipments.

Thunderbird Marina had a positive routine TCR sample collected on 5-05-2010. The repeat samples were collected on 5-12-2010. A raw water E coli sample was not collected. The required routine TCR samples were not collected in July 2010. These two TCR M&R violations were not identified in SDIWS/State and were not listed in the 2010 KDHE ACR. The GWR M&R violation is dated 8/31/2010.

Thunderbird Marina had a positive routine TCR sample that was collected on 6-29-2011; Thunderbird has one well; a raw water E coli and the repeat samples were collected on 7-20-2011. The Ground Water Rule was implemented correctly.

Overbrook had a positive routine TCR sample on 9-17-2010; the repeat samples were collected on 9-27-2010. A raw water E coli sample was not collected. A Ground Water M&R violation is dated 12-08-2010.

A check on Ground Water Rule implementation was done by looking at some of the systems with TCR MCLs reported in the 2010 ACR.

Alexander had positive routine TCR samples collected on 6-14-2010. The repeat samples were collected on 6-22-2010. A raw water E coli sample was not collected. An M&R GWR violation should have been recorded for the 6-14-2010 positive TCR sample.

More recently, Alexander had positive routine TCR sample on 5-17-2011, 7-19-2011, and 9-20-2011. Alexander has 3 wells. Three raw water E coli samples were collected on 6-01-2011, 8-11-2011, and 9-27-2011. The repeat samples were collected on 6-22-2010, 5-24-2011, 7-27-2011, and 9-26-2011. While the Ground Wter Rule was implemented correctly, sample bottles for the raw water E coli sample should be sent out with the repeat sample bottle shipment.

Barber County RWD 2 had positive routine TCR sample collected on 5-26-2010. Barber County RWD has 2 wells. Two raw water E coli samples and the repeat samples were collected on 6-14-2010. The Ground Water Rule was implemented correctly.

Barnes had a positive routine TCR sample on 8-16-2010 and 8-09-2011. Barnes had 2 wells in 2010; two raw water E coli and the repeat samples were collected on 8-24-2010. Barnes has 1 well in 2011; the raw water E coli and repeat samples were collected on 8-15-2011. The Ground Water Rule was implemented correctly.

Barton Hills Addition with 4 wells had a positive routine TCR sample on 1-26-2010 - the repeat samples were collected on 2-1-2010; four raw water E coli samples were collected on 2-2-2010. They had two positive routine TCR samples on 8-25-2010; the repeat samples were collected on 9-13-2010; 2 raw water E coli samples were collected from each well on 9-6-2010. The Ground Water Rule was implemented correctly.

8) Consumer Confidence Report Rule (CCR)

Patti Croy is the Consumer Confidence Report Rule Compliance Officer.

The 2010 ACR had 32 failure to report CCRs from 32 systems; Federal SDWIS has 33 failure to report CCRs from 32 systems.

9) Public Notification Rule

The 2010 ACR lists 33 systems with at least one public notification violation. The Federal SDWIS lists 159 violations from 95 systems.

H) Engineering and Existing System Modification

Approximately 300 construction and study documents were submitted to the Engineering Unit for review and approval in 2010. The review and approval of these documents are managed with a SWEPT database.

The SWEPT database tracks studies received from systems exceeding the MCL are identified. Procedures for sharing this information in monthly Enforcement Meetings have recently been initiated.

I) Sanitary Surveys

Sanitary surveys are conducted by the 14 individuals in the water supply and wastewater unit of the six Bureau of Environmental Field Services six Districts. Only one of the 344 sanitary surveys due in 2010 were not performed.

The KDHE tracks the frequency of sanitary surveys using SDWIS. The KDHE uses the dates of the previous sanitary surveys to generate a list of systems that need a sanitary survey. The list is sent to the field offices so they can coordinate the site visits.

Only one of the 344 sanitary surveys due in 2010 was not performed.

Sanitary surveys are being conducted electronically with a focus on the 8 required elements. KDHE is tracking significant deficiencies. Seventy-nine significant deficiencies were resolved in 2010; 104 remain unresolved.

The majority of the unresolved significant deficiencies are due to lack of an Emergency Water Supply Plan or cross connection control program. The letter to the system identifying the significant deficiency includes information that free assistance to prepare these documents can be obtained from the Kansas Rural Water Association (KRWA). A contract with the KRWA to provide technical assistance is managed through the technical set-aside of the DrinkingWater State Revolving Fund.

These types of significant deficiencies are often unresolved, and are repeated in subsequent sanitary surveys. KDHE should initiate a program to share with the KRWA a listing of the systems that KDHE is sending letters offering KRWA's assistance. This will allow KRWA to take the lead in offering assistance to the systems to resolve the significant deficiency.

J) Operator Certification

The annual operator certification report was submitted before the due date of April 30 2010. It was approved by Bob Dunlevey on June 25, 2010.

Operator Certification requirements and associated training are advertised on the KDHE website: http://www.kdheks.gov/water/www.html .

The Data Management and Analysis Group of the Compliance and Data Management Unit of the Public Water Supply Section provided a report that listed 2 systems that did not have a certified operator - Rick's Restaurant and Leavenworth County RWD #1.

The Water and Wastewater Operator Certification Program is managed by two individuals in the Technical Services Section of the Bureau of Water. The Operator Certification Program indicated that Rick's Restaurant had a contract operator and that the PWS Section was informed of that fact. It did concur that Leavenworth County RWD #1 did not have a certified operator, and did not so for several years. A draft Directive was prepared in December 2010 to be sent to Leavenworth County RWD #1. It was never finalized and transmitted.

The operator certification program is managed by individuals in the Technical Services Section. SDWIS is maintained by the Public Water Supply Section. Procedures to be used by the Technical Services Section for reporting systems without an adequately classified operator to the Public Water Supply Section to be entered into SDWIS and to initiate potential enforcement action need to be documented in an SOP.

The KDHE Operator Certification database is available on-line:

http://kensas.kdhe.state.ks.us/pls/certop/BOW_ADMINL.Home

The database tracks the certification status for each operator. The record for each operator identifies the "Employer". The record does not track a PWSID. The record identifies the class of the operator and if the operator's status is active or not. Since a PWSID is not contained in the record of the on-line database, it is unclear how KDHE can ascertain that each water system has an adequately certified operator. The Operator Certification Program stated that ensuring that each system has an adequately certified operator is managed "behind the scenes". It is recommended that the database be modified to track the PWSID of each water system, a.k.a., "Employer", and that a option for generating a listing of systems without an adequately certified operator be added to the on-line database.

A significant change to the program will be that an operator will not be allowed to attain a grade of certification above that which is required of the system to which it is employed. This will reduce the numbers of tests requested each year, and will reduce the numbers of the operators moving to other systems.

K) Capacity Development

The Capacity Development Program advertises its program on its website:

http://www.kdheks.gov/pws/capdev.html

The capacity development program has been focused on the implementation of KanCap or the board member training and is working to start with the implementation of the Rate Check-up/CapFinance programs to assist small systems in revising their rates and to create budgets plans and strategies for their system.

Another aspect of this program is the reimbursement of the cost for compliance monitoring for crypto for systems serving less than 10,000 that were triggered into crypto monitoring because their E coli monitoring exceeded the revised trigger of 200. This was allowed through a set-aside to the Drinking Water State Revolving Fund.

The Annual Capacity Development Report was submitted before the due date of September 30, 2010. It was approved by Bob Dunlevy on November 21, 2010.

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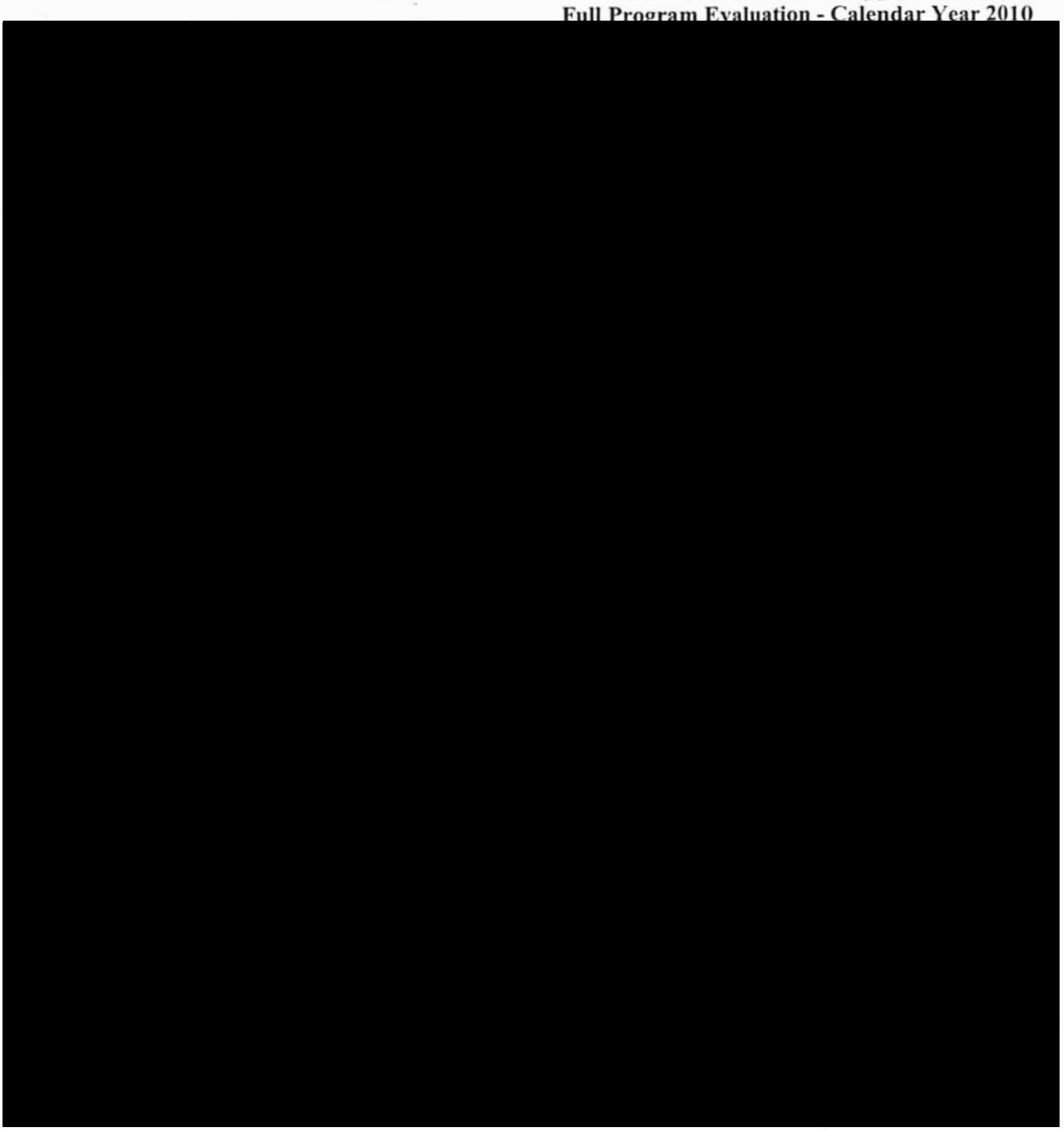

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Enforcement Evaluation – Findings

The Enforcement Process

Most of the information for this part of the Evaluation was provided through discussions and correspondence with KDHE drinking water enforcement staff, who were very helpful. Additional information is included in the KDHE PWS Enforcement Policy.

The EPA understands that enforcement is generally initiated at the central office, and no formal mechanisms exist for districts to initiate enforcement. The districts, however, are not precluded from taking enforcement actions.

Enforcement priorities are generally established according to health-based criteria, consistent with the ERP. In addition, the KDHE considers the size of the PWS (number of people served), the compliance history of the PWS, and the cost and timeframe associated with potential corrective actions in evaluating appropriate enforcement (KDHE PWS Enforcement Policy; 9/1/2006).

The KDHE believes that EPA's ERP narrowly defines the meaning of "on the path" to compliance, as KDHE utilizes technical assistance and informal enforcement actions, such as Directives, to assist and compel systems to return to compliance. The ERP does not recognize such actions as "formal" enforcement, and does not consider systems receiving such assistance to be "on the path" to compliance. KDHE believes that the compliance status of a system, rather than specific enforcement mechanisms employed, is the best measure of determining the effectiveness of their enforcement program.

KDHE generally prefers to negotiate orders on consent rather than issuing unilateral orders. KDHE's experience has been that unilateral orders are more frequently the subject of appeals, which may create significant administrative delays. KDHE generally employs "Directives" and "consent orders" as their primary enforcement vehicles. The terminology associated with such vehicles and the associated SDWIS coding of these actions should be clarified and made consistent. KDHE codes "Directives" as "SFJ" in SDWIS, which is generally associated with NOVs; "consent orders" are coded as "SFK", which is considered a BCA in SDWIS. Since the ERP directs the use of formal enforcement tools at priority PWSs, the terminology and coding is important.

KDHE has been working to integrate enforcement into regular business practices, and holds regular enforcement review meetings, where staff from the engineering and monitoring groups often participate. Staff indicates that review of enforcement deliverables is not always well tracked, and that a formal process for monitoring the status of deliverables specified under orders was needed.

The KDHE drinking water enforcement program may be hampered by staffing issues. Four staff members had been working on enforcement issues, however, two staff members, including key members of the management and enforcement teams, have recently left KDHE. Staff indicated that KDHE had previously employed a more formal process from tracking/monitoring compliance with enforcement orders, however, with the loss of key staff, this practice had effectively discontinued.

Discussion

EPA's ERP and KDHE's PWS Enforcement Policy contain some similar elements, but also include elements that are potentially conflicting. The ERP is a "system-based" approach where enforcement is targeted against systems with the most persistent, most egregious violations. KHDE's policy is more violation-based. The KDHE policy also indicates that corrective action costs are a consideration in evaluating enforcement. The policy does not indicate whether higher or lower costs of corrective action would dictate a more or less formal enforcement approach. While recognizing that cost is an important

consideration in determining implementation details of necessary corrective/enforcement action, EPA believes that health-based concerns must be the primary driver in prioritizing enforcement.

Recommendations - The Enforcement Process

As noted in the 2007 APE, KDHE's PWS Enforcement Policy should be revised. The Policy should reflect an approach consistent with the ERP regarding the timely application of formal enforcement to address significant and persistent (or recurring) health-based violations. In addition, the Policy should include provisions for enforcement escalation consistent with the ERP to address violations other than microbiological contaminants. A System-based approach to escalation, rather than a violation-based approach to escalation, is recommended.

EPA agrees with KDHE that the compliance status of a PWS should be a primary metric in considering the overall effectiveness of an enforcement program. While EPA believes that technical assistance and informal enforcement tools may be effective at addressing some non-compliant systems, especially those with less complex violations and those with a positive regulatory history, EPA believes data indicates that formal enforcement actions are useful/necessary to address more involved compliance problems to ensure a more timely return to compliance.

EPA and KDHE should review enforcement documents and determine whether KDHE "consent orders" are most appropriately coded in SDWIS as "SFK" (BCA – informal) or "SFL" (Administrative Order – formal). It would appear that a KDHE consent order most appropriately resemble what EPA would consider to be an "Administrative Order on Consent" and should be coded as formal enforcement – SFL.

KDHE should take steps to ensure that adequate personnel are in place so that enforcement efforts as necessary to protect public health are not impaired.

Effectiveness of Enforcement – Part 1

EPA believes that the enforcement program is comprised of two important elements. The front end of the process is the identification of violations and the actions taken (including informal and formal actions) to abate those violations. The back end of the enforcement process is the tracking and compliance monitoring of existing orders that have been issued to systems in violation. EPA evaluated both components of the process as part of the evaluation.

EPA's evaluation of the front end of the enforcement process focused primarily on the actions taken by KDHE to assist/compel systems to return to compliance. A significant number of Region 7's most serious PWS violators are located in Kansas. The July 2011 ETT list indicates that the top 11 ETT-scoring PWSs, and approximately 25 of the top 50 ETT-scoring PWSs in Region 7 are in Kansas. These systems have health-based violations, and a number of the systems have been non-compliant for a number of years. At some systems, enforcement actions have been taken (Directives, BCAs), and at others, no enforcement actions were indicated. In either case, systems had not been returned to compliance and remain non-compliant.

Some pertinent details regarding these (top 11 ETT-scoring) non-compliant systems are outlined in Table 12.

Table 12 - Summary of High Priority, Non-Compliant PWSs in Kansas

PWS Name	PWS ID	ETT Score (July 2011)	Non-Compliance Driver	Enforcement Action-Date	Current Status
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Pretty Prairie	KS2015501	133	Nitrate MCL	SFJ – 11/07	Non-compliant
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

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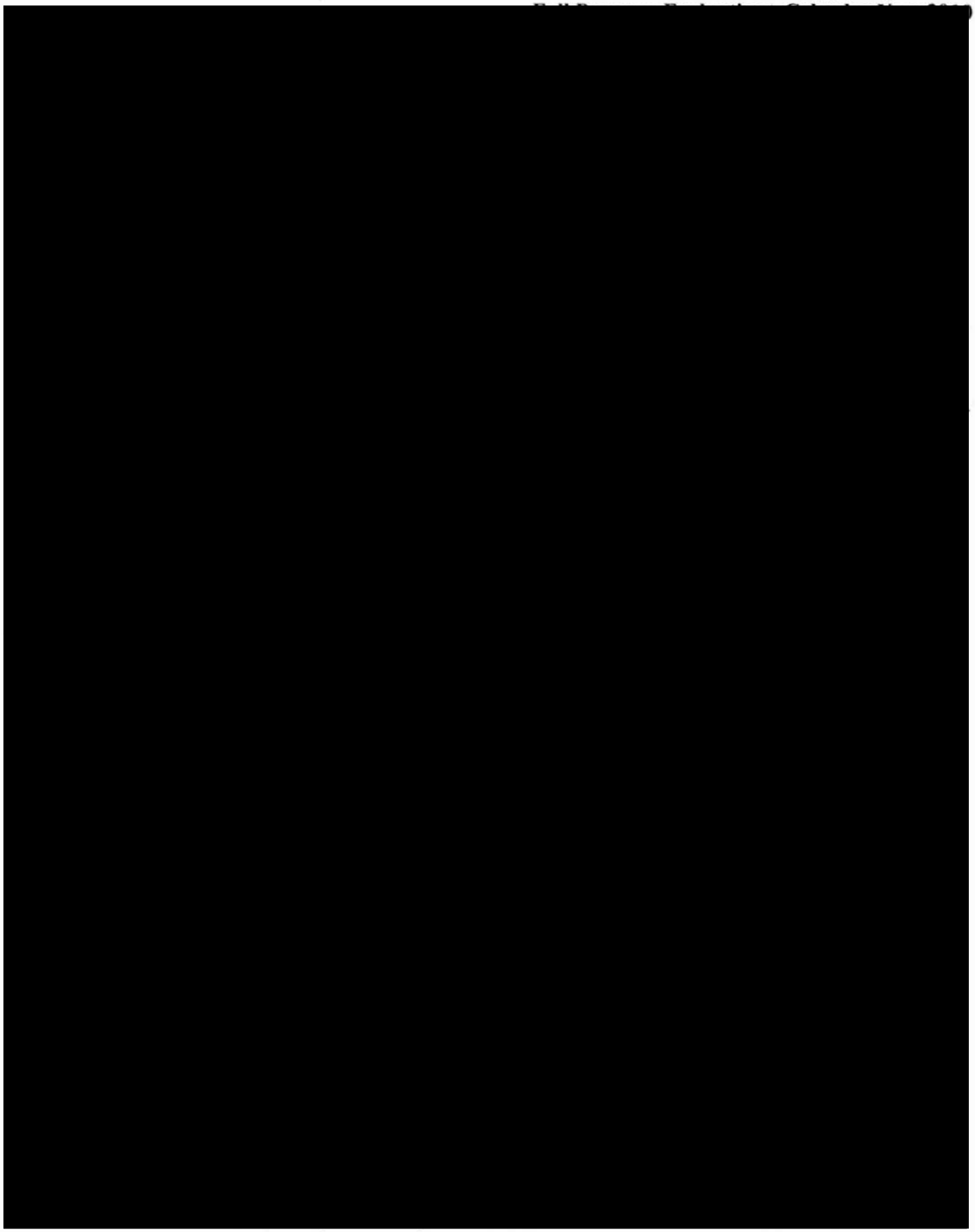

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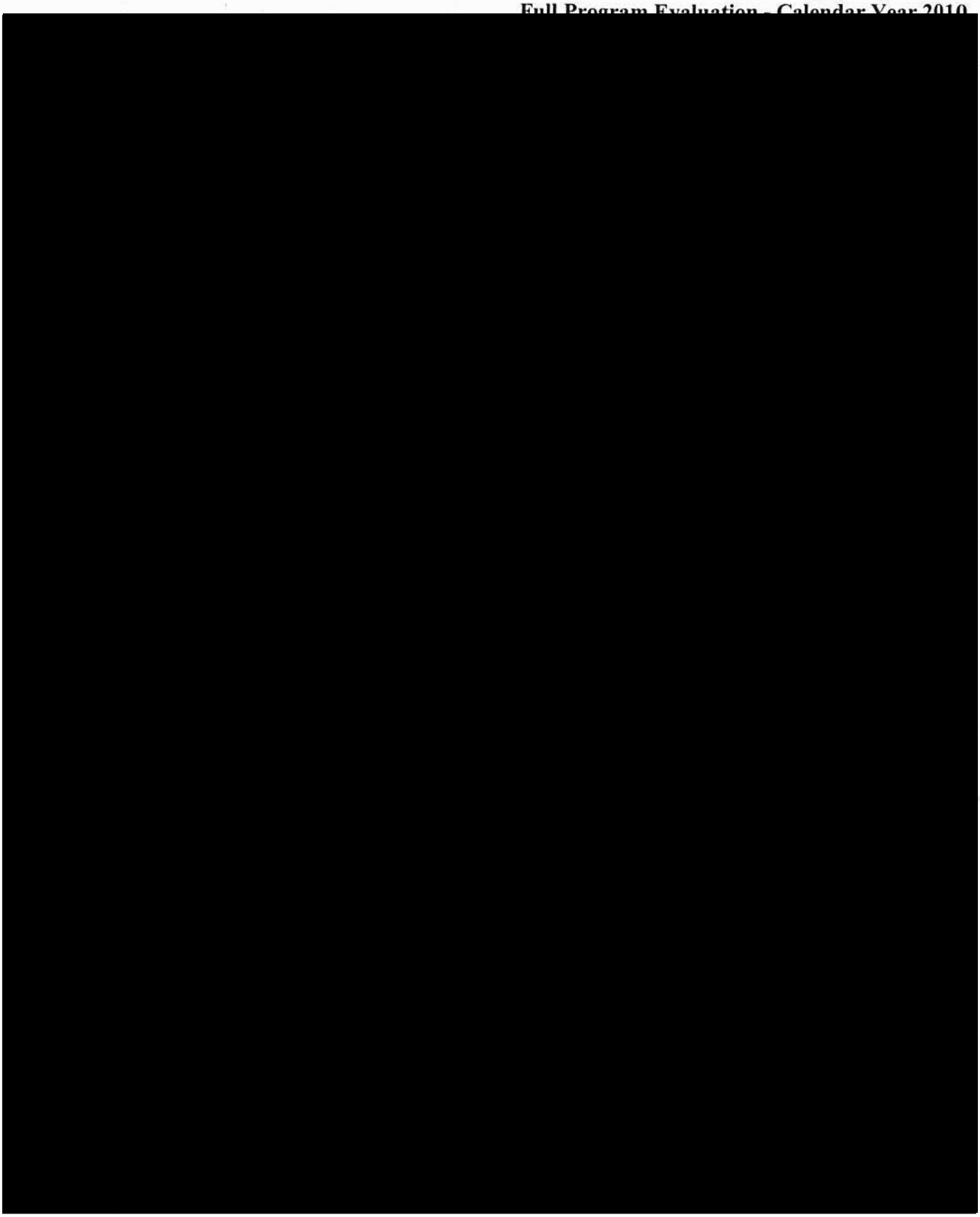

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Appendix A
Timeline for Permanent Rules and Regulations in Kansas

Step 1	Submit Regulations to Secretary of Administration
Step 2	Submit regulations to Attorney General
Step 3	Submit the Hearing notice to the Secretary of State
Step 4	Notice published in the *Kansas Register*
Step 5	Joint Committee on Administrative Rules and Regulations reviews and comments on proposed regulations
Step 6	Hold the public hearing
Step 7	Obtain approval for any revisions, adopt; file with the Secretary of State
Step 8	Regulations published in the *Kansas Register*
Step 9	Regulations take effect

Appendix B
Stage 2 DBP Systems referred to EPA

Schedule 3 Systems

Atchison Co RWD 5C	City of Towanda
Butler Co RWD 1	Franklin Co RWD 4
Butler Co RWD 2	Labette Co RWD 6
Butler Co RWD 3	Leavenworth Co RWD 5
Butler Co RWD 6	Leavenworth Co RWD 8
Butler Co RWD 7	Saline Co RWD 3
City of Salina	

Schedule 4Systems

Allen Co RWD 8	City of Smith Center
Anderson Co RWD 1C	City of St. Paul
Butler Co RWD 4	City of Waverly
City of Alma	Cowley Co RWD 3
City of Burlingame	Greenwood Co RWD 1
City of Florence	Greenwood Co RWD 2
City of Herington	Labette Co RWD 5
City of Howard	Labette Co RWD 8
City of La Cygne	Linn Co RWD 2
City of Leroy	Miami Co RWD 3
City of Marion	Mitchell Co RWD 2
City of Mulberry	Montgomery Co RWD 4
City of Oswego	Neosho Co RWD 2
City of Peabody	Osage Co RWD 3
City of Plainville	Rice Co RWD 1
City of Russell	

Appendix C

Division of Environment

John Mitchell Director of Environment Unclassified					
Julia Young Safety Officer Pub Svc Exec III Unclassified			Donna Fisher Sr. Admin Spec Classified		
Bureau of Air	Bureau of Environmental Field Services	Bureau of Environmental Remediation	Bureau of Waste Management	Bureau of Water	Kansas Health and Environmental Labs
Rick Brunetti Bureau Director Pub Svc Exec IV Unclassified	Leo Henning Bureau Director Pub Svc Exec IV Unclassified	Gary Blackburn Bureau Director Pub Svc Exec IV Classified	Bill Bider Bureau Director Pub Svc Exec IV Classified	Karl Mueldener Bureau Director Prof Env Engr III Classified	Leo Henning (interim) Lab Director Pub Svc Exec IV Unclassified

Appendix D

Bureau of Water

Karl Mueldener (Retired) Mike Tate (Interim) Bureau Director Prof Env Engr III Classified							
Industrial Programs	Municipal Programs	Technical Services	Public Water Supply	Watershed Management	Livestock Waste Management	Geology	Watershed Planning
Don Carlson Prof Env Eng III Classified	Rod Geisler Prof Env Engr III Classified	Mike Tate Prof Env Engr III Classified	Dave Waldo(Retired) Prof Env Eng III Classified	Kerry Wedel Env Scientist V Unclassified	Terry Medley Prof Env Engr III Unclassified	Mike Cochran Env Scientist V Classified	Tom Stiles Env Scientist V Classified

Appendix E

Public Water Supply Section

<table>
<tr><td colspan="9">Dave Waldo (Retired)
Prof Env Engr III
Classified</td><td>Linda White
Admin Spec
Classified</td></tr>
<tr><td colspan="9"></td><td>Karrie Ullery
Admin Asst
Unclassified</td></tr>
<tr><td colspan="3">Engineering Unit</td><td rowspan="3">William Carr
Env Scientist III
Classified</td><td rowspan="3">Capacity Development Unit</td><td colspan="4">Compliance & Data Management Unit</td></tr>
<tr><td colspan="3">Dan Clair
Prof Env Eng II
Classified</td><td colspan="4">Darrel Plummer
Env Scientist IV
Classified</td></tr>
<tr><td rowspan="3">Paul Bodner
Prof Env Engr I
Classified</td><td rowspan="3">Rex Cox
Prof Env Eng II
Classified</td><td rowspan="3">Vacant
Env Tech III
Unclassified</td><td rowspan="3">Cathy Tucker-Vogel
Env Scientist IV
Classified</td><td>Program Development & Enforcement</td><td>Data Management</td><td>Monitoring & Compliance</td></tr>
<tr><td>Vacant
Env Scientist III
Classified</td><td>Ellan Spivey
Res Analyst II
Classified</td><td>Jonathan Hayes
Env Scientist II
Classified</td></tr>
<tr><td>Patti Croy
Env Tech IV
Classified</td><td>Christianne Huard
Admin Spec
Unclassified</td><td>Jean Herrold
Env Scientist I
Classified</td></tr>
<tr><td colspan="8" rowspan="3"></td><td>Dianne Sands
Env Scientist I
Classified</td></tr>
<tr><td>Andrew Hare
Env Scientist I
Classified</td></tr>
<tr><td>Vacant
Env Scientist I
Classified</td></tr>
</table>

2010 ACR Violation Comparisons

Code	Name	Source	# viol'ns	# RTC'd	# PWSs
1005	Arsenic MCL	Fed	26	2	7
		KS	26	NP	7
1025	Fluoride MCL	Fed	4	0	1
		KS	4	NP	1
1040	Nitrate MCL	Fed	62	7	27
		KS	62	NP	27
4006	Uranium MCL	Fed	16	4	7
		KS	17	NP	6
4010	Combined Radium	Fed	5	3	3
		KS	5	NP	3
2050	Atrazine MCL	Fed	0	0	0
		KS	1	NP	1
2946	EDB M&R	Fed	2	0	2
		KS	0	0	0
	21 VOCs M&R	Fed	2	0	2
		KS	1	0	1
21	TCR MCL Acute	Fed	3	3	3
		KS	3	NP	3
22	TCR MCL Monthly	Fed	63	51	55
		KS	63	NP	55
23	TCR Routine M&R	Fed	20	13	15
		KS	22*	NP	19*
25	TCR Repeat M&R	Fed	5	4	5
		KS	22*	NP	19*
2	**DBPs MCL Average**	Fed	**63**	8	20**
	TTHMs MCL Average	KS	**41**	NP	14
	HAA5s MCL Average	KS	**43**	NP	15
	DBPs M&R	Fed	**4**	0	3
		KS	**0**	0	**0**
46	TOC Precursor Removal	Fed	8	0	4
		KS	12	NP	4
43	**Single Turbidity**	Fed	**1**	**1**	**1**
		KS	**33***	**NP**	**11***
44	**Monthly Turbidity**	Fed	**1**	**1**	**1**
		KS	**33***	**NP**	**11***
52	**LCR Routine & Follow-up**	Fed	**71**	**4**	**58**
		KS	**31**	**NP**	**29**
58	OCCT Installation & Dem'n	Fed	2	0	2
		KS	3	NP	3

75	**Public Notice**	Fed	**159**	**76**	**95**
		KS	**57**	**NP**	**39**
71	CCR-Failure to Report	Fed	33	25	32
		KS	32	NP	32
NP	Not Provided				
*	Not distinguished				
**	9 systems exceed both				

Appendix G

KDHE PWS Website[http://www.kdheks.gov/pws/]

Purpose of the Section
Groundwater Rule NEW
New EPA Rules
- Stage 2 DDBPR Fact Sheet
- LT2 Fact Sheet

PWS Contact Change Form
Primary Drinking Water Regulations
Kansas Statutes Pertaining to Public Water Supply
Survival Guides for Drinking Water Rules and Regulations
Public Water Supply Section Staff
Kansas Primary Drinking Water Regulation Package
Drinking Water Contaminants and Maximum Contaminant Levels
Standards for Secondary Drinking Water Contaminants
Engineering and Permits Unit
- Plan Review and Permits
  - Minimum Design Standards
  - Public Water Supply Permit Applications
  - CT Helper
- State Revolving Loan Fund

Capacity Development Program
Data Management & Compliance Unit
- Total Coliform
- Arsenic
- Asbestos
- Nitrate/Nitrite
- Inorganic Compounds (IOC)
- Volatile Organic Compounds (VOC)
- Synthetic Organic Compounds (SOC)
- Lead and Copper
- Disinfection By-Products
  - Stage 1 Compliance Report for populations greater than 10,000 (.xls)
  - Stage 1 Compliance Report for populations less than 10,000 (.xls)
  - Stage 1 Compliance Report with formulas for populations greater than 10,000 (.xls)
  - Stage 1 Compliance Report with formulas for populations less than 10,000 (.xls)
  - TOC Report Forms with formulas (.xls)
  - TOC Reports blank (.xls)
- Surface Water Treatment
- Radionuclides

Sampling Information Guide
Public Notification
Consumer Confidence Reports (CCRs)
- CCR Quick Reference Guide
- Blank Certificate of Delivery

Annual Compliance Reports
Related Links

Appendix H

Randomly Selected Systems in Compliance Data Check

Community Water Systems

District	Surface Water	Surface Water Purchasing	Ground Water	Ground Water Purchasing
North West	Norton	Waldo	Norton Correctional Facility	Countryside Estates MHP
North Central	Salina	Jewell	Fort Riley	University Park Water District
North East	Kansas BPU Miami RWD #2 Olathe Water One	Douglas RWD #5 Lansing Correctional Facility Miami RWD #4	Eudora O'Connell Youth Ranch	Reserve Jefferson RWD #14
South West			Dodge City Isabel Kansas Soldiers Home	Larned State Hospital
South Central	Arkansas City Augusta El Dorado Wichita	PWWSD #8 Douglass	North Newton Pretty Prairie	Reno RWD #4
South East	Coffeyville Independence PWWSD #5	Linn RWD #2 Neosho RWD #6 Osage RWD #4	Pittsburg	Cherokee RWD #7

Non-Community Water Systems

District	Non-Transient	Transient
North West	KSU Agricultural Research Center	Free Breakfast Inn

North Central	Fort Riley Multi Purpose Range Complex	US Army COE-Milford Farnum Creek
North East	Building Blocks Day Care Center LLC	KDOT Goodland Rest Area WB 32515 Clinton Reservoir (Surface Water)
South West	Sunflower Electric Power Corp National Beef Packing Co LLC – Liberal	Gunsmoke Travel Park
South Central	St. Joseph Catholic School	Eberly Farm Inc
South East	Fall River Management (Surface Water) Riverton School	Quivira Scout Ranch

Appendix I

EPA Approval of Phase II/V Waiver Plan

Second Cycle (2002-2010)

Appendix J
Enforcement Response Policy

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 8 2009

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Drinking Water Enforcement Response Policy

FROM: Cynthia Giles
Assistant Administrator

TO: Regional Administrators

Attached is a new enforcement approach designed to help our nation's public water systems comply with the requirements of the Safe Drinking Water Act. This new approach replaces the existing contaminant by contaminant compliance strategy with one that focuses enforcement attention on the drinking water systems with the most serious or repeated violations. The new strategy will bring the systems with the most significant violations to the top of the list for enforcement action in states, territories and in federal Indian Country, so that we can return those systems to compliance as quickly as possible. As we work to protect the public's access to clean and safe drinking water, we need to be especially vigilant about noncompliance that has the potential to affect children, such as violations at schools and day care centers.

This policy was developed through the intensive cooperation of the Association of State Drinking Water Administrators, all EPA Regions, the Office of Water and Office of Enforcement and Compliance Assurance, and reflects our shared commitment to clean and safe drinking water. This new approach will be implemented starting in January of 2010, and will be evaluated during the coming year to see if improvements are necessary to best protect public health.

Thank you for the work your staff does, working closely with the states, to achieve the goals of the Safe Drinking Water Act. We expect that this new enforcement approach will help us do an even better job of increasing compliance with this important law.

If you have any questions, please contact me, or have your staff contact Mark Pollins at (202-564-4001 or Karin Koslow at (202)564-0171.

cc:
Peter Silva
Cynthia Dougherty
Adam Kushner

Lisa Lund
Regional Enforcement Directors
Regional Water Division Directors
Regional Counsel, Regions II - VII, IX, X
Regional Legal Enforcement Managers, Regions I, VIII

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 8 2009

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Proposed Revision to Enforcement Response Policy for the Public Water System Supervision (PWSS) Program under the Safe Drinking Water Act and Implementation of the Enforcement Targeting Tool

FROM: Mark Pollins, Director
Water Enforcement Division
Office of Civil Enforcement

for Karin Koslow, Acting Director
Compliance Assistance and Sector Programs Division
Office of Compliance

TO: Office of Regional Counsel, Regions 1-10
Drinking Water Program Managers, Regions 1-10
Drinking Water Enforcement Managers, Regions 1-10
Association of State Drinking Water Administrators

Introduction

EPA is proposing a new approach for enforcement targeting under the Safe Drinking Water Act (SDWA) for Public Water Systems. The new approach is designed to identify public water systems with violations that rise to a level of significant noncompliance by focusing on those systems with health-based violations and those that show a history of violations across multiple rules. This system-based methodology is intended to ensure consistency and the integrity of the PWSS national enforcement program. The new approach includes a revised Enforcement Response Policy (ERP) and new Enforcement Targeting Tool (ETT).

The Enforcement Response Policy and Enforcement Targeting Tool re-emphasize a focus on "return to compliance" (RTC) rather than simply "addressing" a violation. The policy is intended to increase our

effectiveness in the protection of public health. Together the ERP and ETT will prioritize and direct enforcement response to systems with the most systemic noncompliance by considering all violations incurred by a system in a comprehensive way. The policy and tool identify priority systems for enforcement response, provide a model to escalate responses to violations; define timely and appropriate actions; and clarify what constitutes a formal action.

In general, the goal of the revised ERP and new ETT is to allow States and EPA to:

- Align public water system violations of the Safe Drinking Water Act within a prioritization that is more protective of public health;

- View public water system compliance status comprehensively;

- Ensure that both EPA and the States act on and resolve drinking water violations;

- Recognize the validity of informal enforcement response efforts while ensuring that, if these efforts have proven ineffective, enforceable and timely action is taken;

- Ensure that EPA and the States escalate enforcement efforts based on the prioritization approach;

- Increase the effectiveness of state and federal enforcement targeting efforts by providing a "tool" that calculates comprehensive noncompliance status for all systems and identifies those systems not meeting national expectations as set by EPA. It also provides an additional resource for identifying systems possibly in need of other State/EPA assistance in the areas of Capacity Development and Sustainability.

The final revised Enforcement Response Policy will supersede the following existing guidance by revising the definition of "timely" and "appropriate" enforcement response: *"Change in the PWSS Program's Definition of Timely and Appropriate Actions"* WSG 56 (Water Supply Guidance), April 20, 1990 and *"Revised Definition of Significant Non-complier (SNC) and the Model for Escalating Responses to Violations for the PWSS Program"* WSG 57 (Water Supply Guidance), May 22, 1990.

Identification of Priority Systems for Enforcement Using the Enforcement Targeting Tool

This system-based approach uses a tool that enables the prioritization of public water systems by assigning each violation a "weight" or number of points based on the assigned threat to public health. For example, a violation of a microbial rule maximum contaminant level will carry more weight than that of a Consumer Confidence Report reporting violation. Points for each violation at a water system are summed to provide a total score for that water system. Water systems whose scores exceed a certain threshold will be considered a priority system for enforcement. Based on this approach, States and EPA will be able to target resources to address those public water systems which EPA determines have the most significant problems.

Currently it is difficult to identify a systematic pattern of violations for a PWS because the focus of the current approach has been to assign "significant non-compliance" (SNC) status based on failure to comply with individual drinking water rules. Under the existing system, all SNCs are treated equally, without regard to the gravity of the violation and without considering other violations a system may have that are not identified as SNC. The new approach will look at PWS noncompliance comprehensively across all rules without using the rule-based SNC definitions and will ultimately replace the current rule-based SNC definitions to identify systems that are a high priority for an enforcement response.

Enforcement Targeting Formula

The enforcement targeting formula is the basis for the enforcement targeting tool that identifies public water systems having the highest total noncompliance across all rules, within a designated period of time. A higher weight is placed on health-based violations (including Treatment Technique and Maximum Contaminant Level violations). The formula calculates a score for each water system based on open ended violations and violations that have occurred over the past 5 years, but does not include violations that have returned to compliance or are on the "path to compliance" through a specified enforceable action. The "path to compliance" is the status of a public water system that has been placed under an enforceable action to return it to compliance. These enforceable actions have different names in different states but the characteristic they all share is that an enforceable consequence results if the schedule is not met. The formula only considers violations for Federally-regulated contaminants.

As part of any State or Federal program, it is expected that enforceable actions will be adequately tracked to make certain compliance is ultimately achieved.

The formula provides a rank-order of all public water systems based on the total points assigned for each violation and the length of time since the first unaddressed violation. The factors of the formula are:

- The severity of the violation—which is based on a modification of Public Notification Tiers, as set forth in Title 40 of the Code of Federal Regulations at Part 141, Subpart Q, "Public Notification of Drinking Water Violations," Section 141.201. The severity or weight of the violation is highest for acute contaminant health based violations, with a lower weight for chronic and other health based violations (and nitrate monitoring and total coliform repeat monitoring violations), and with the lowest weighting for other monitoring, reporting, and other violations.

- The number of years that a system's violations have been unaddressed

For each public water system (PWS), a point score of non-compliance is calculated using this formula:

$$\text{Sum } (S_1+S_2+S_3+\ldots) + n$$

The total points for each violation are added together, and a time factor is added to achieve the total score for the public water system, where:

S = violation severity factor

10 For each acute health-based violation

5 For each other health-based violation and Total Coliform Rule (TCR) repeat monitoring violation

For each Nitrate monitoring and reporting violation

1 For each other monitoring and reporting, or any other violation

n = number of years that the system's oldest violations have been unaddressed (0 to 5)

Examples of Priority Systems for Enforcement

During the trial period, any public water system with a score resulting from the application of the enforcement targeting formula which is greater than or equal to 11 points will be considered a priority system for an enforcement response under this policy. Public water systems whose violations score at this level have at least one recent acute health-based violation, or at least two recent other non-acute health-based violations, or eleven other recent non-health-based violations. The following table illustrates examples of how a public water system may exceed the 11-point threshold:

Violations (S)	Years since first unaddressed violation (n)	Score $(\Sigma S)+n$	
2 acute turbidity exceedances	0 (occurred in current year)	(10+10)+0	=20
2 non-acute TCR MCL violations	1 (1 in previous year)	(5+5) +1	=11
11 monthly TCR monitoring violations	0 (all in current year)	(1+1+1+1+1+1+1+1+1+1+1) +0	=11
6 quarterly TCR monitoring violations, 1 annual nitrate monitoring violation	1 (first violations occurred in previous year)	((1+1+1+1+1+1)+5) + 1	=12
Failure to monitor annual VOC, SOC, IOC, Stage 1 DBP and 2 TCR MCL	2 (chemical violations occurred 2 years ago)	((1+1+1+1)+5+5) + 2	=16

Violations of tier 1 public notification requirements are significant because they reflect the failure to provide critical and real-time information to the public regarding drinking water. Although these violations are assigned a "1" under the policy, they would, by definition, be accompanied by an underlying violation of the health-based standard and would receive a score of at least 11.

Model for Escalating Responses to Violations

The existing model for escalating responses to violations sets forth EPA's expectation for EPA and the States' responses to a violation. The following concepts continue to be part of this new Enforcement Response Policy:

The primacy agency should respond to each violation of the national primary drinking water regulations.

Responses to violations should escalate in formality as the violation continues or recurs.

Some violations are very serious and pose an immediate risk to public health. In these circumstances, it is appropriate to proceed directly to a formal action, such as an emergency administrative order, an injunction or a temporary restraining order (TRO), or an emergency civil referral.

States have primary enforcement responsibility, and EPA retains independent enforcement authority under the Safe Drinking Water Act. In cases where the EPA Region is directly implementing the program "State" should be read to include the EPA Regional office. In addition, these guidelines should not be interpreted to preclude federal action at any point in the process if the situation warrants it.

Historically, the majority of enforcement actions taken for violations at public water systems are administrative in nature and these actions continue to be an important tool. Judicial cases also are an important enforcement tool and the use of judicial authority is encouraged.

EPA recognizes that States carry out both formal and informal enforcement and compliance assistance activities. These activities are effective tools for achieving compliance. Nevertheless, systems specifically identified by the targeting tool as priorities must be returned to compliance (RTC) or EPA will expect formal, enforceable mechanisms to return such systems to compliance. States will be expected to escalate their response to ensure that return to compliance is accomplished. Systems that are unable to sustain compliance should receive additional scrutiny.

Timely and Appropriate Response

Once a PWS is identified as an enforcement priority on the targeted list, an appropriate formal action or return to compliance will be required within two calendar quarters to be considered "timely." However, regardless of a public water system's position on a State's enforcement target list, EPA expects that States will act immediately on acute, health-based violations and subsequently confirm that systems with such violations return to compliance.

Formal enforcement response includes: administrative orders with and without penalty, civil/criminal referral, and civil/criminal case filed. (See Table A, below, for a complete list.) Nevertheless, it should be noted that EPA has broad prosecutorial discretion to discuss specific timetables and mechanisms to return a system to compliance. For example, if a system can show that RTC is imminent but for reasons such as installation of new treatment or construction or other reason, RTC may take just over two quarters, EPA may not require a formal action by the State to give the system the opportunity to RTC. This discretion allows for some flexibility for systems that simply need a little more time but whose return to compliance is imminent. It is not, however, something that can be extended indefinitely as a way to avoid formal action.

The return to compliance or enforcement action needs to be achieved within two quarters of a system appearing as a priority system for enforcement and recorded such that it is reflected in the next update of the national database. For example, if a system is identified in January as an enforcement priority, the state would have until June to RTC the system's violations or take a formal enforcement action. The return to compliance or enforcement action should be reported to EPA so that it is reflected in the Federal database in October.

Formal Enforcement

EPA has defined what constitutes a "formal" enforcement response in Water Supply Guidance 27 (WSG 27), *"Guidance for FY 1987 PWSS Enforcement Agreements"*. That guidance states: "According to the Agency's policy framework, a formal action is defined as one which requires specific actions necessary for the violator to return to compliance, is based on a specific violation, and is independently enforceable without having to prove the original violation". The definition of "formal" enforcement response in WSG 27 will be adopted by this Policy. A formal enforcement action has the

intent and effect of bringing a non-compliant system back into compliance by a certain time with an enforceable consequence if the schedule is not met. This may be accomplished through a variety of mechanisms, depending on a State's legal authorities. The enforcement mechanism selected by the State must (1) contain a description of the non-compliant violation, a citation to the applicable State, or federal law or rule, a statement of what is required to return to compliance, and a compliance schedule; and (2) provide the State with authority to impose penalties for violation of the State's enforcement document.

Trial and Implementation of the Enforcement Response Policy and Targeting Tool

During the trial period, EPA will generate a national scored list using the enforcement targeting tool and formula described above. This list will include only systems with violations that have not been returned to compliance nor are on the path to compliance. Systems on the list with a score of 11 points or more will be considered as priority systems for enforcement response. This list will also indicate those systems that scored 11 points or higher on a previous list for tracking systems on the path to compliance and to help ensure return to compliance is achieved. EPA and the States will discuss the priority water systems on the list each quarter and determine additional steps that may be needed to achieve RTC.

As discussed above, a State may use initial compliance assistance to resolve the violations, as long as the return to compliance (RTC) takes place within two quarters of the system appearing as a priority for enforcement response. If RTC is not likely during those two quarters, escalation of the response is expected via an enforceable action within the "timely" period to compel the system to RTC in the shortest time possible. In many cases, this response will be in the form of an administrative order with or without penalties or other enforceable mechanism. States will enter the appropriate code in the SDWIS data base to reflect the State formal action or that compliance has been achieved.

Once a system's violations are on the path to compliance (i.e. incorporated into a formal enforcement action) or returned to compliance, the system drops off the targeting list and is no longer a priority for enforcement response. Those systems on the path to compliance will continue to be tracked by States and EPA until return to compliance is achieved with appropriate escalated enforcement response, as necessary.

Return to compliance is the ultimate goal and the State and Federal data systems should reflect all final return to compliance codes.

Defining the Status of Systems on the "Targeting List"

Until a State has returned a system's violations to compliance, the violations have not been completely resolved. The following categories are the general categories that States and EPA can use when discussing whether a system's violations are being adequately addressed. The focus under the new Enforcement Response Policy is to have a public water system return to compliance in the shortest time possible.

No Action/Unaddressed- Violation reported by State, with either no action taken to return the public water system to compliance, or where the initial informal action(s) or compliance assistance have not been successful to return to compliance. Further action will be needed.

Returned to Compliance- The public water system has completed monitoring, reporting or implementation of treatment or other activities to be in compliance with the regulations. All forms of compliance assistance and informal or formal enforcement actions are appropriate means to return to compliance. The appropriate return to compliance code shall be entered into SDWIS.

Unresolved but on the Path to Compliance: This category includes systems that have an EPA or State enforceable compliance order or schedule in place to resolve violations. In these cases, formal enforcement is expected to be successful toward implementing a schedule for sampling, treatment or construction, and therefore no further enforcement is required. The State and/or EPA will continue to monitor compliance with schedules and other requirements of the order.

Unresolved: Systems with continuing, ongoing violations that have had compliance assistance, informal and/or formal enforcement response without a return to compliance. This category is for those systems with a chronic failure to return to compliance.

Additional Factors to Consider in the Evaluation of the Targeting Formula: *Population and System-Type Factors*

The joint EPA-ASDWA workgroup recommended initiating the policy using the formula previously described. However, there was significant discussion over whether population and system type factors should be included in the formula. Concern was generally expressed that an emphasis on large population systems might skew the relative ranking of systems toward those servicing large population centers. Care must be given, however, to make certain small systems receive attention, particularly since those systems often serve vulnerable populations and have the most difficulty maintaining compliance. During the trial period evaluation, EPA requests that States consider whether including population and system-type factors, or other variables, should be incorporated into the targeting formula. The details of this analysis may be found in the Appendix to this Memorandum.

Appendix K
Systems Included in Enforcement Review

Appendix L
KDHE Responsive Information

ACTIVE NOTICE OF VIOLATIONS\DIRECTIVES

FEDERAL ID	STATE ID	District	SYSTEM NAME	POP.	TYPE OF ORDER	DATE ISSUED	Contaminant	COMMENTS
							Comb. Uranium &	

[redacted]

KS2015501	T4000	SCD	Pretty Prairie	680	Directive	11/20/2007	Nitrate	The City has questioned EPA on its ruling against the KDHE Nitrate Strategy and is awaiting for an informational meeting with EPA.